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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5716 OF 2005

Vilas Krushna Tikekar ... Petitioner

Vs.

Shashikant Baburao Vaikar & Ors. ... Respondents

Mr. Dushyant Purekar for the petitioner.

Ms. Sahitya Laxmi Deshpande for respondent 1.

CORAM: SMT. RANJANA DESAI, J.

DATED: 2ND SEPTEMBER, 2005.

P.C.:-

1. Regular Civil Suit No.31 of 1988 was filed by respondent 1 for possession of the suit property. It was decreed on 19/4/1999. The petitioner's parents i.e. the judgment debtors filed Regular Civil Appeal No.56 of 1999. That was dismissed on 2/9/2004. Thereafter, the execution proceedings were initiated. The decree holder filed applications (Ex-11) and (Ex-14) for warrant of possession. The petitioner i.e. the son of judgment debtors resisted the claim of warrant of possession and prayed that he may be added as party to the Darkhast proceedings. That application has been rejected and the application filed by the decree holder for issuance of warrant of possession has been allowed. This order is challenged before me in this writ petition.

2. I have heard, at considerable length, Mr. Purekar, the learned counsel for the petitioner. He has taken me through the application (Ex-18). In the application (Ex-18), there is an attempt to assail the judgment and decree passed in Regular Civil Suit No.31 of 1988, which was confirmed in Appeal No.56 of 1999. It is an admitted position that the judgment in Appeal No.56 of 1999 has not been challenged and it has assumed finality. It is not open, therefore, for the petitioner to assail the said judgment in this application. In the application, it is also stated that the petitioner has filed a separate suit being Regular Civil Suit No.239 of 2004, which is pending in the court of Civil Judge, Senior Division, Ratnagiri, contending that the judgment and decree passed in Regular Civil Suit No.31 of 1988 which is confirmed in Appeal No.56 of 1999 is not binding on him. I am informed that in that suit, he has also made an application for interim injunction restraining the decree holder from executing the decree in Regular Civil Suit No.31 of 1988 which was confirmed in Appeal No.56 of 1999. Since that suit is pending, it is always open to the petitioner to seek appropriate reliefs in that suit. In my opinion, the trial court has rightly rejected his application for impleading him as a party in the Darkhast proceedings. Order issuing possession warrant cannot be set aside. The petition is, therefore, rejected.

3. At this stage, the learned counsel for the petitioner

states that the impugned order may be stayed for some time. The said prayer is rejected.

4. Certified copy expedited.

(SMT. RANJANA DESAI, J.)